

UTILITIES CODE
TITLE 2. PUBLIC UTILITY REGULATORY ACT
SUBTITLE B. ELECTRIC UTILITIES
CHAPTER 36. RATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES.

(a) The regulatory authority may establish and regulate rates of an electric utility and may adopt rules for determining:

- (1) the classification of customers and services; and
- (2) the applicability of rates.

(b) A rule or order of the regulatory authority may not conflict with a ruling of a federal regulatory body.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.002. COMPLIANCE WITH TITLE. An electric utility may not charge or receive a rate for utility service except as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.003. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that each rate an electric utility or two or more electric utilities jointly make, demand, or receive is just and reasonable.

(b) A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer.

(c) An electric utility may not:

- (1) grant an unreasonable preference or advantage concerning rates to a person in a classification;
- (2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates; or
- (3) establish or maintain an unreasonable difference concerning rates between localities or between classes of service.

(d) In establishing an electric utility's rates, the commission may treat as a single class two or more municipalities

that an electric utility serves if the commission considers that treatment to be appropriate.

(e) A charge to an individual customer for retail or wholesale electric service that is less than the rate approved by the regulatory authority does not constitute an impermissible difference, preference, or advantage.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.004. EQUALITY OF RATES AND SERVICES. (a) An electric utility may not directly or indirectly charge, demand, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable tariff filed under Section [32.101](#).

(b) A person may not knowingly receive or accept a service from an electric utility for a compensation greater or less than the compensation prescribed by the tariff.

(c) Notwithstanding Subsections (a) and (b), an electric utility may charge an individual customer for wholesale or retail electric service in accordance with Section [36.007](#).

(d) This title does not prevent a cooperative corporation from returning to its members net earnings resulting from its operations in proportion to the members' purchases from or through the corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.005. RATES FOR AREA NOT IN MUNICIPALITY. Without the approval of the commission, an electric utility's rates for an area not in a municipality may not exceed 115 percent of the average of all rates for similar services for all municipalities served by the same utility in the same county as that area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.006. BURDEN OF PROOF. In a proceeding involving a proposed rate change, the electric utility has the burden of proving that:

(1) the rate change is just and reasonable, if the utility proposes the change; or

(2) an existing rate is just and reasonable, if the proposal is to reduce the rate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.007. DISCOUNTED WHOLESALE OR RETAIL RATES. (a) On application by an electric utility, a regulatory authority may approve wholesale or retail tariffs or contracts containing charges that are less than rates approved by the regulatory authority but not less than the utility's marginal cost. The charges must be in accordance with the principles of this title and may not be unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(b) The method for computing the marginal cost of the electric utility consists of energy and capacity components. The energy component includes variable operation and maintenance expense and marginal fuel or the energy component of purchased power. The capacity component is based on the annual economic value of deferring, accelerating, or avoiding the next increment of needed capacity, without regard to whether the capacity is purchased or built.

(c) The commission shall ensure that the method for determining marginal cost is consistently applied among utilities but may recognize the individual load and resource requirements of the electric utility.

(d) Notwithstanding any other provision of this title, the commission shall ensure that the electric utility's allocable costs of serving customers paying discounted rates under this section are not borne by the utility's other customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.008. STATE TRANSMISSION SYSTEM. In establishing rates for an electric utility, the commission may review the state's transmission system and make recommendations to the utility on the need to build new power lines, upgrade power lines, and make other necessary improvements and additions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 23, eff. Sept. 1, 1999.

Sec. 36.009. BILLING DEMAND FOR CERTAIN UTILITY CUSTOMERS. Notwithstanding any other provision of this code, the commission by rule shall require a transmission and distribution utility to:

(1) waive the application of demand ratchet provisions for each nonresidential secondary service customer that has a maximum load factor equal to or below a factor set by commission rule;

(2) implement procedures to verify annually whether each nonresidential secondary service customer has a maximum load factor that qualifies the customer for the waiver described by Subdivision (1);

(3) specify in the utility's tariff whether the utility's nonresidential secondary service customers that qualify for the waiver described by Subdivision (1) are to be billed for distribution service charges on the basis of:

- (A) kilowatts;
- (B) kilowatt-hours; or
- (C) kilovolt-amperes; and

(4) modify the utility's tariff in the utility's next base rate case to implement the waiver described by Subdivision (1) and make the specification required by Subdivision (3).

Added by Acts 2011, 82nd Leg., R.S., Ch. 150 (H.B. [1064](#)), Sec. 1, eff. May 28, 2011.

SUBCHAPTER B. COMPUTATION OF RATES

Sec. 36.051. ESTABLISHING OVERALL REVENUES. In establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.052. ESTABLISHING REASONABLE RETURN. In establishing a reasonable return on invested capital, the regulatory authority shall consider applicable factors, including:

- (1) the efforts and achievements of the utility in conserving resources;
- (2) the quality of the utility's services;
- (3) the efficiency of the utility's operations; and
- (4) the quality of the utility's management.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 24, eff. Sept. 1, 1999.

Sec. 36.053. COMPONENTS OF INVESTED CAPITAL. (a) Electric utility rates shall be based on the original cost, less depreciation, of property used by and useful to the utility in providing service.

(b) The original cost of property shall be determined at the time the property is dedicated to public use, whether by the utility that is the present owner or by a predecessor.

(c) In this section, the term "original cost" means the actual money cost or the actual money value of consideration paid other than money.

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), orders an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., 1st C.S., Ch. 1 (S.B. 20), Sec. 1, eff. September 1, 2005.

Sec. 36.054. CONSTRUCTION WORK IN PROGRESS. (a)

Construction work in progress, at cost as recorded on the electric utility's books, may be included in the utility's rate base. The inclusion of construction work in progress is an exceptional form of rate relief that the regulatory authority may grant only if the utility demonstrates that inclusion is necessary to the utility's financial integrity.

(b) Construction work in progress may not be included in the rate base for a major project under construction to the extent that the project has been inefficiently or imprudently planned or managed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.055. SEPARATIONS AND ALLOCATIONS. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.056. DEPRECIATION, AMORTIZATION, AND DEPLETION.

(a) The commission shall establish proper and adequate rates and methods of depreciation, amortization, or depletion for each class of property of an electric or municipally owned utility.

(b) The rates and methods established under this section and the depreciation account required by Section [32.102](#) shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.057. NET INCOME; DETERMINATION OF REVENUES AND EXPENSES. (a) An electric utility's net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority.

(b) The regulatory authority shall determine revenues and expenses in a manner consistent with this subchapter.

(c) The regulatory authority may adopt reasonable rules with respect to whether an expense is allowed for ratemaking purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.058. CONSIDERATION OF PAYMENT TO AFFILIATE. (a) Except as provided by Subsection (b), the regulatory authority may not allow as capital cost or as expense a payment to an affiliate for:

(1) the cost of a service, property, right, or other item; or

(2) interest expense.

(b) The regulatory authority may allow a payment described by Subsection (a) only to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the commission.

(c) A finding under Subsection (b) must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) a finding that the price to the electric utility is not higher than the prices charged by the supplying affiliate for the same item or class of items to:

(A) its other affiliates or divisions; or

(B) a nonaffiliated person within the same market area or having the same market conditions.

(d) In making a finding regarding an affiliate transaction, the regulatory authority shall:

(1) determine the extent to which the conditions and circumstances of that transaction are reasonably comparable relative to quantity, terms, date of contract, and place of delivery; and

(2) allow for appropriate differences based on that determination.

(e) This section does not require a finding to be made before payments made by an electric utility to an affiliate are included in the utility's charges to consumers if there is a mechanism for making the charges subject to refund pending the making of the finding.

(f) If the regulatory authority finds that an affiliate expense for the test period is unreasonable, the regulatory authority shall:

- (1) determine the reasonable level of the expense; and
- (2) include that expense in determining the electric utility's cost of service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 25, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 413 (S.B. [1668](#)), Sec. 1, eff. June 17, 2005.

Sec. 36.059. TREATMENT OF CERTAIN TAX BENEFITS. (a) In determining the allocation of tax savings derived from liberalized depreciation and amortization, the investment tax credit, and the application of similar methods, the regulatory authority shall:

- (1) balance equitably the interests of present and future customers; and

- (2) apportion accordingly the benefits between consumers and the electric or municipally owned utility.

(b) If an electric utility or a municipally owned utility retains a portion of the investment tax credit, that portion shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.060. CONSOLIDATED INCOME TAX RETURNS.

(a) If an expense is allowed to be included in utility rates or an investment is included in the utility rate base, the related income tax benefit must be included in the computation of income tax expense to reduce the rates. If an expense is not allowed to be included in utility rates or an investment is not included in the utility rate base, the related income tax benefit may not be included in the computation of income tax expense to reduce the rates. The income tax expense shall be computed using the statutory income tax rates.

(b) The amount of income tax that a consolidated group of which an electric utility is a member saves, because the consolidated return eliminates the intercompany profit on

purchases by the utility from an affiliate, shall be applied to reduce the cost of the property or service purchased from the affiliate.

(c) The investment tax credit allowed against federal income taxes, to the extent retained by the electric utility, shall be applied as a reduction in the rate-based contribution of the assets to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 787 (S.B. [1364](#)), Sec. 1, eff. September 1, 2013.

Sec. 36.061. ALLOWANCE OF CERTAIN EXPENSES. (a) The regulatory authority may not allow as a cost or expense for ratemaking purposes:

- (1) an expenditure for legislative advocacy; or
- (2) an expenditure described by Section [32.104](#) that the regulatory authority determines to be not in the public interest.

(b) The regulatory authority may allow as a cost or expense:

- (1) reasonable charitable or civic contributions not to exceed the amount approved by the regulatory authority; and
- (2) reasonable costs of participating in a proceeding under this title not to exceed the amount approved by the regulatory authority.

(c) An electric utility located in a portion of this state not subject to retail competition may establish a bill payment assistance program for a customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate the individual's body temperature because of severe burns received in combat. A regulatory authority shall allow as a cost or expense a cost or expense of the bill payment assistance program. The electric utility is entitled to:

- (1) fully recover all costs and expenses related to the bill payment assistance program;
- (2) defer each cost or expense related to the bill

payment assistance program not explicitly included in base rates;
and

(3) apply carrying charges at the utility's weighted average cost of capital to the extent related to the bill payment assistance program.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 597 (S.B. [981](#)), Sec. 1, eff. June 14, 2013.

Sec. 36.062. CONSIDERATION OF CERTAIN EXPENSES. The regulatory authority may not consider for ratemaking purposes:

(1) an expenditure for legislative advocacy, made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) a payment made to cover costs of an accident, equipment failure, or negligence at a utility facility owned by a person or governmental entity not selling power in this state, other than a payment made under an insurance or risk-sharing arrangement executed before the date of loss;

(3) an expenditure for costs of processing a refund or credit under Section [36.110](#); or

(4) any other expenditure, including an executive salary, advertising expense, legal expense, or civil penalty or fine, the regulatory authority finds to be unreasonable, unnecessary, or not in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.063. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR LEASE OF MERCHANDISE. In establishing an electric or municipally owned utility's rates, the regulatory authority may not consider any profit or loss that results from the sale or lease of merchandise, including appliances, fixtures, or equipment, to the extent that merchandise is not integral to providing utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.064. SELF-INSURANCE. (a) An electric utility may self-insure all or part of the utility's potential liability or catastrophic property loss, including windstorm, fire, and explosion losses, that could not have been reasonably anticipated and included under operating and maintenance expenses.

(b) The commission shall approve a self-insurance plan under this section if the commission finds that:

- (1) the coverage is in the public interest;
- (2) the plan, considering all costs, is a lower cost alternative to purchasing commercial insurance; and
- (3) ratepayers will receive the benefits of the savings.

(c) In computing an electric utility's reasonable and necessary expenses under this subchapter, the regulatory authority, to the extent the regulatory authority finds is in the public interest, shall allow as a necessary expense the money credited to a reserve account for self-insurance. The regulatory authority shall determine reasonableness under this subsection:

- (1) from information provided at the time the self-insurance plan and reserve account are established; and
- (2) on the filing of a rate case by an electric utility that has a reserve account.

(d) After a reserve account for self-insurance is established, the regulatory authority shall:

- (1) determine whether the reserve account has a surplus or shortage under Subsection (e); and
- (2) subtract any surplus from or add any shortage to the utility's rate base.

(e) A surplus in the reserve account exists if the charges against the account are less than the money credited to the account. A shortage in the reserve account exists if the charges against the account are greater than the money credited to the account.

(f) The allowance for self-insurance under this title for ratemaking purposes is not applicable to nuclear plant investment.

(g) The commission shall adopt rules governing self-insurance under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.065. PENSION AND OTHER POSTEMPLOYMENT BENEFITS.

(a) The regulatory authority shall include in the rates of an electric utility expenses for pension and other postemployment benefits, as determined by actuarial or other similar studies in accordance with generally accepted accounting principles, in an amount the regulatory authority finds reasonable. Expenses for pension and other postemployment benefits include, in an amount found reasonable by the regulatory authority, the benefits attributable to the service of employees who were employed by the predecessor integrated electric utility of an electric utility before the utility's unbundling under Chapter 39 irrespective of the business activity performed by the employee or the affiliate to which the employee was transferred on or after the unbundling.

(b) An electric utility may establish one or more reserve accounts for expenses for pension and other postemployment benefits. An electric utility shall periodically record in the reserve account any difference between:

(1) the annual amount of pension and other postemployment benefits approved as an expense in the electric utility's last general rate proceeding or, if that amount cannot be determined from the regulatory authority's order, the amount recorded for pension and other postemployment benefits under generally accepted accounting principles during the first year that rates from the electric utility's last general rate proceeding are in effect; and

(2) the annual amount of pension and other postemployment benefits as determined by actuarial or other similar studies that are chargeable to the electric utility's expense.

(c) A surplus in the reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is greater than the amount determined under Subsection (b)(2). A shortage in the reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is less than the amount determined under Subsection (b)(2).

(d) If a reserve account for pension and other postemployment benefits is established, the regulatory authority

at a subsequent general rate proceeding shall:

(1) review the amounts recorded to the reserve account to determine whether the amounts are reasonable expenses;

(2) determine whether the reserve account has a surplus or shortage under Subsection (c); and

(3) subtract any surplus from or add any shortage to the electric utility's rate base with the surplus or shortage amortized over a reasonable time.

Added by Acts 2005, 79th Leg., Ch. 385 (S.B. 1447), Sec. 1, eff. June 17, 2005.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 51 (S.B. 1002), Sec. 1, eff. May 22, 2017.

Sec. 36.066. COSTS RELATED TO REPORTING ON SAFETY PROCESSES AND INSPECTIONS FOR CERTAIN UTILITIES. (a) Costs incurred by an electric utility to comply with Section 38.102 shall be recorded as a regulatory asset for timely recovery in rates established by the commission.

(b) The commission may adopt rules relating to the recording of regulatory assets under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1320 (H.B. 4150), Sec. 3, eff. September 1, 2019.

SUBCHAPTER C. GENERAL PROCEDURES FOR RATE CHANGES PROPOSED BY UTILITY

Sec. 36.101. DEFINITION. In this subchapter, "major change" means an increase in rates that would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2-1/2 percent. The term does not include an increase in rates that the regulatory authority allows to go into effect or the electric utility makes under an order of the regulatory authority after hearings held with public notice.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.102. STATEMENT OF INTENT TO CHANGE RATES. (a)

Except as provided by Section 33.024, an electric utility may not change its rates unless the utility files a statement of its intent with the regulatory authority that has original jurisdiction over those rates at least 35 days before the effective date of the proposed change.

(b) The electric utility shall also mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality.

(c) The statement of intent must include:

(1) proposed revisions of tariffs; and

(2) a detailed statement of:

(A) each proposed change;

(B) the effect the proposed change is expected to have on the revenues of the utility;

(C) each class and number of utility consumers affected; and

(D) any other information required by the regulatory authority's rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.103. NOTICE OF INTENT TO CHANGE RATES. (a) The electric utility shall:

(1) publish, in conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and

(2) mail notice of the proposed change to any other affected person as required by the regulatory authority's rules.

(b) The regulatory authority may waive the publication of notice requirement prescribed by Subsection (a) in a proceeding that involves only a rate reduction for each affected ratepayer. The applicant shall give notice of the proposed rate change by mail to each affected utility customer.

(c) The regulatory authority by rule shall define other proceedings for which the publication of notice requirement prescribed by Subsection (a) may be waived on a showing of good

cause. A waiver may not be granted in a proceeding involving a rate increase to any class or category of ratepayer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.104. EARLY EFFECTIVE DATE OF RATE CHANGE. (a) For good cause shown, the regulatory authority may allow a rate change, other than a major change, to take effect:

(1) before the end of the 35-day period prescribed by Section 36.102; and

(2) under conditions the regulatory authority prescribes, subject to suspension as provided by this subchapter.

(b) The electric utility shall immediately revise its tariffs to include the change.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.105. DETERMINATION OF PROPRIETY OF RATE CHANGE; HEARING. (a) If a tariff changing rates is filed with a regulatory authority, the regulatory authority shall, on complaint by an affected person, or may, on its own motion, not later than the 30th day after the effective date of the change, enter on a hearing to determine the propriety of the change.

(b) The regulatory authority shall hold a hearing in every case in which the change constitutes a major change. The regulatory authority may, however, use an informal proceeding if the regulatory authority does not receive a complaint before the 46th day after the date notice of the change is filed.

(c) The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The electric utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.106. REGIONAL HEARING. The commission shall hold a regional hearing at an appropriate location in a case in which the commission determines it is in the public interest to hear

testimony at a regional hearing for inclusion in the record.
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.107. PREFERENCE TO HEARING. The regulatory authority shall:

(1) give preference to a hearing under this subchapter and to deciding questions arising under this subchapter and Subchapter E over any other question pending before it; and

(2) decide the questions as quickly as possible.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.108. RATE SUSPENSION; DEADLINE. (a) Pending the hearing and a decision:

(1) the local regulatory authority, after delivering to the electric utility a written statement of the regulatory authority's reasons, may suspend the rate change for not longer than 90 days after the date the rate change would otherwise be effective; and

(2) the commission may suspend the rate change for not longer than 150 days after the date the rate change would otherwise be effective.

(b) The 150-day period prescribed by Subsection (a)(2) shall be extended two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the regulatory authority does not make a final determination concerning a rate change before expiration of the applicable suspension period, the regulatory authority is considered to have approved the change. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.109. TEMPORARY RATES. (a) The regulatory authority may establish temporary rates to be in effect during the applicable suspension period under Section [36.108](#).

(b) If the regulatory authority does not establish temporary rates, the rates in effect when the suspended tariff was

filed continue in effect during the suspension period.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.110. BONDED RATES. (a) An electric utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the commission is exercising appellate or original jurisdiction, by filing a bond with the commission if:

(1) the 150-day suspension period has been extended under Section 36.108(b); and

(2) the commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(b) The bonded rate may not exceed the proposed rate.

(c) The bond must be:

(1) payable to the commission in an amount, in a form, and with a surety approved by the commission; and

(2) conditioned on refund.

(d) The electric utility shall refund or credit against future bills:

(1) money collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on that money, at the current interest rate as determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.111. ESTABLISHMENT OF FINAL RATES. (a) If, after hearing, the regulatory authority finds the rates are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the rates the electric utility shall charge or apply for the service in question; and

(2) serve a copy of the order on the electric utility.

(b) The rates established in the order shall be observed thereafter until changed as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

For expiration of this section, see Subsection (g).

Sec. 36.112. COST RECOVERY AND RATE ADJUSTMENT STANDARDS AND PROCEDURES FOR CERTAIN NON-ERCOT UTILITIES. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) In establishing the base rates of the electric utility under this subchapter or Subchapter D, the regulatory authority shall determine the utility's revenue requirement based on, at the election of the utility:

(1) information submitted for a test year; or

(2) information submitted for a test year, updated to include information that reflects the most current actual or estimated information regarding increases and decreases in the utility's cost of service, including expenses, capital investment, cost of capital, and sales.

(c) An electric utility that elects to provide updated information under Subsection (b)(2) must provide the information for a period ending not later than the 30th day before the date the applicable rate proceeding is filed.

(d) An electric utility that includes estimated information in the initial filing of a proceeding shall supplement the filing with actual information not later than the 45th day after the date the initial filing was made. The regulatory authority shall extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing, except that the extension period may not exceed 45 days.

(e) An electric utility that makes an election under Subsection (b) is not precluded from proposing known and measurable adjustments to the utility's historical rate information as permitted by this title and regulatory authority rules.

(f) Without limiting the availability of known and measurable adjustments described by Subsection (e), the regulatory authority shall allow an affected electric utility to make a known and measurable adjustment to include in the utility's rates the prudent capital investment, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts, including any

offsetting revenue, as determined by the regulatory authority, associated with a newly constructed or acquired natural gas-fired generation facility. The regulatory authority is required to allow the adjustment only if the facility is in service before the effective date of new rates. The adjustment may be made regardless of whether the investment is less than 10 percent of the utility's rate base before the date of the adjustment.

(g) This section expires September 1, 2031.

Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 1, eff. June 17, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1067 (H.B. 1397), Sec. 1, eff. June 14, 2019.

SUBCHAPTER D. RATE CHANGES PROPOSED BY REGULATORY AUTHORITY

Sec. 36.151. UNREASONABLE OR VIOLATIVE EXISTING RATES. (a) If the regulatory authority, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of an electric utility for a service are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the just and reasonable rates to be observed thereafter, including maximum or minimum rates; and

(2) serve a copy of the order on the electric utility.

(b) The rates established under Subsection (a) constitute the legal rates of the electric utility until changed as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. If an electric utility does not produce or generate the service that it distributes, transmits, or furnishes to the public for compensation but obtains the service from another source, the regulatory authority may investigate the cost of that production or generation in an investigation of the reasonableness

of the electric utility's rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.153. RATE-FILING PACKAGE. (a) An electric utility shall file a rate-filing package with the regulatory authority not later than the 120th day after the date the authority notifies the utility that the authority will proceed with an inquiry under Section 36.151.

(b) The regulatory authority may grant an extension of the 120-day period prescribed by Subsection (a) or waive the rate-filing package requirement on agreement of the parties.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.154. DEADLINE. (a) The regulatory authority shall make a final determination not later than the 185th day after the date the electric utility files the rate-filing package required by Section 36.153.

(b) The deadline prescribed by Subsection (a) is extended two days for each day the actual hearing on the merits of the case exceeds 15 days.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.155. INTERIM ORDER ESTABLISHING TEMPORARY RATES. (a) At any time after an initial complaint is filed under Section 36.151, the regulatory authority may issue an interim order establishing temporary rates for the electric utility to be in effect until a final determination is made.

(b) On issuance of a final order, the regulatory authority:

(1) may require the electric utility to refund to customers or to credit against future bills:

(A) money collected under the temporary rates in excess of the rate finally ordered; and

(B) interest on that money, at the current interest rate as determined by the commission; or

(2) shall authorize the electric utility to surcharge bills to recover:

(A) the amount by which the money collected under

the temporary rates is less than the money that would have been collected under the rate finally ordered; and

(B) interest on that amount, at the current interest rate as determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.156. AUTOMATIC TEMPORARY RATES. (a) The rates charged by the electric utility on the 185th day after the date the utility files the rate-filing package required by Section 36.153 automatically become temporary rates if:

(1) the 185-day period has been extended under Section 36.154(b); and

(2) the regulatory authority has not issued a final order or established temporary rates for the electric utility on or before the 185th day.

(b) On issuance of a final order, the regulatory authority:

(1) shall require the electric utility to refund to customers or to credit against future bills:

(A) money collected under the temporary rates in excess of the rate finally ordered; and

(B) interest on that money, at the current interest rate as determined by the commission; or

(2) shall authorize the electric utility to surcharge bills to recover:

(A) the amount by which the money collected under the temporary rates is less than the money that would have been collected under the rate finally ordered; and

(B) interest on that amount, at the current interest rate as determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.157. RATE REVIEW SCHEDULE. (a) This section applies only to an electric utility, other than a river authority, that operates solely inside ERCOT.

(b) Notwithstanding any other provision of this title, not later than June 1, 2018, the commission by rule shall establish a schedule that requires an electric utility to make periodic filings

with the commission to modify or review base rates charged by the electric utility. The schedule may be established on the basis of:

(1) the period since the commission entered the commission's final order in the electric utility's most recent base rate proceeding;

(2) whether the electric utility has earned materially more than the utility's authorized rate of return on equity as demonstrated by earnings monitoring reports; or

(3) other criteria that the commission determines is in the public interest.

(c) The commission shall extend the date for the proceeding required by Subsection (b) by one year on a year-to-year basis if, 180 days before the date the proceeding is required, the electric utility's most recent earnings monitoring report shows the electric utility is earning, on a weather-normalized basis, less than 50 basis points above:

(1) for a transmission and distribution utility, the average of the most recent commission-approved rate of return on equity for each transmission and distribution utility with 175,000 or more metered customers; and

(2) for a transmission-only utility, the average of the most recent commission-approved rate of return on equity for each transmission-only utility.

(d) The commission may extend the date for the proceeding required by Subsection (b) for good cause shown or because of resource constraints of the commission.

(e) This section does not limit the ability of a regulatory authority to initiate a base rate proceeding at any time under this title.

Added by Acts 2017, 85th Leg., R.S., Ch. 200 (S.B. [735](#)), Sec. 1, eff. May 27, 2017.

SUBCHAPTER E. COST RECOVERY AND RATE ADJUSTMENT

Sec. 36.201. AUTOMATIC ADJUSTMENT FOR CHANGES IN COSTS. Except as permitted by Section [36.204](#), the commission may not establish a rate or tariff that authorizes an electric utility to

automatically adjust and pass through to the utility's customers a change in the utility's fuel or other costs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 26, eff. Sept. 1, 1999.

Sec. 36.202. ADJUSTMENT FOR CHANGE IN TAX LIABILITY. (a) The commission, on its own motion or on the petition of an electric utility, shall provide for the adjustment of the utility's billing to reflect an increase or decrease in the utility's tax liability to this state if the increase or decrease:

(1) results from Chapter 5, Acts of the 72nd Legislature, 1st Called Session, 1991; and

(2) is attributable to an activity subject to the commission's jurisdiction.

(b) The commission shall apportion pro rata to each type and class of service provided by the utility any billing adjustment under this section. The adjustment:

(1) shall be made effective at the same time as the increase or decrease of tax liability described by Subsection (a)(1) or as soon after that increase or decrease as is reasonably practical; and

(2) remains effective only until the commission alters the adjustment as provided by this section or enters an order for the utility under Subchapter C or D.

(c) Each year after an original adjustment, the commission shall:

(1) review the utility's increase or decrease of tax liability described by Subsection (a)(1); and

(2) alter the adjustment as necessary to reflect the increase or decrease.

(d) A proceeding under this section is not a rate case under Subchapter C.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.203. FUEL COST RECOVERY; ADJUSTMENT OF FUEL FACTOR. (a) Section 36.201 does not prohibit the commission from reviewing and providing for adjustments of a utility's fuel factor.

(b) The commission by rule shall implement procedures that provide for the timely adjustment of a utility's fuel factor, with or without a hearing. The procedures must require that:

(1) the findings required by Section 36.058 regarding fuel transactions with affiliated interests are made in a fuel reconciliation proceeding or in a rate case filed under Subchapter C or D; and

(2) an affected party receive notice and have the opportunity to request a hearing before the commission.

(c) The commission may adjust a utility's fuel factor without a hearing if the commission determines that a hearing is not necessary. If the commission holds a hearing, the commission may consider at the hearing any evidence that is appropriate and in the public interest.

(d) The commission shall render a timely decision approving, disapproving, or modifying the adjustment to the utility's fuel factor.

(e) The commission by rule shall provide for the reconciliation of a utility's fuel costs on a timely basis.

(f) A proceeding under this section is not a rate case under Subchapter C.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.204. COST RECOVERY AND INCENTIVES. In establishing rates for an electric utility, the commission may:

(1) allow timely recovery of the reasonable costs of conservation, load management, and purchased power, notwithstanding Section 36.201; and

(2) authorize additional incentives for conservation, load management, purchased power, and renewable resources.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 27, eff. Sept. 1, 1999.

Sec. 36.205. PURCHASED POWER COST RECOVERY. (a) This section applies only to an increase or decrease in the cost of purchased electricity that has been:

(1) accepted by a federal regulatory authority; or

(2) approved after a hearing by the commission.

(b) The commission may use any appropriate method to provide for the adjustment of the cost of purchased electricity on terms determined by the commission.

(c) Purchased electricity costs may be recovered:

(1) concurrently with the effective date of the changed costs to the purchasing electric utility; or

(2) as soon after the effective date as reasonably practical.

(d) The commission may provide a mechanism to allow an electric utility that has a noncontiguous geographical service area and that purchases power for resale for that noncontiguous service area from electric utilities that are not members of the Electric Reliability Council of Texas to recover purchased power costs for the area in a manner that reflects the purchased power cost for that specific geographical noncontiguous area. The commission may not require an electric cooperative corporation to use the mechanism provided under this section unless the electric cooperative corporation requests its use.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.206. MARK-UPS. (a) A cost recovery factor established for the recovery of purchased power costs may include:

(1) the cost the electric utility incurs in purchasing capacity and energy;

(2) a mark-up added to the cost or another mechanism the commission determines will reasonably compensate the utility for any financial risk associated with purchased power obligations; and

(3) the value added by the utility in making the purchased power available to customers.

(b) The mark-ups and cost recovery factors, if allowed, may be those necessary to encourage the electric utility to include economical purchased power as part of the utility's energy and capacity resource supply plan.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.207. USE OF MARK-UPS. Any mark-ups approved under Section 36.206 are an exceptional form of rate relief that the electric utility may recover from ratepayers only on a finding by the commission that the relief is necessary to maintain the utility's financial integrity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 28, eff. Sept. 1, 1999.

Sec. 36.208. PAYMENT TO QUALIFYING FACILITY. In establishing an electric utility's rates, the regulatory authority shall:

(1) consider a payment made to a qualifying facility under an agreement certified under Subchapter C, Chapter 35, to be a reasonable and necessary operating expense of the electric utility during the period for which the certification is effective; and

(2) allow full, concurrent, and monthly recovery of the amount of the payment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.209. RECOVERY BY CERTAIN NON-ERCOT UTILITIES OF CERTAIN TRANSMISSION COSTS. (a) This section applies only to an electric utility that operates solely outside of ERCOT in areas of this state included in the Southeastern Electric Reliability Council, the Southwest Power Pool, or the Western Electricity Coordinating Council and that owns or operates transmission facilities.

(b) The commission, after notice and hearing, may allow an electric utility to recover on an annual basis its reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the electric utility under a tariff approved by a federal regulatory authority to the extent that the costs or charges have not otherwise been recovered. The commission may allow the electric utility to recover only the costs allocable to retail customers in the state and may not allow the electric utility to over-recover costs.

Added by Acts 2005, 79th Leg., Ch. 1024 (H.B. 989), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1226 (S.B. [1492](#)), Sec. 1, eff. June 19, 2009.

For expiration of this section, see Subsection (i).

Sec. 36.210. PERIODIC RATE ADJUSTMENTS. (a) The commission or a regulatory authority, on the petition of an electric utility, may approve a tariff or rate schedule in which a nonfuel rate may be periodically adjusted upward or downward, based on changes in the parts of the utility's invested capital, as described by Section [36.053](#), that are categorized as distribution plant, distribution-related intangible plant, and distribution-related communication equipment and networks in accordance with commission rules adopted after consideration of the uniform system of accounts prescribed by the Federal Energy Regulatory Commission. A periodic rate adjustment must:

(1) be approved or denied in accordance with an expedited procedure that:

(A) provides for appropriate updates of information;

(B) allows for participation by the office and affected parties; and

(C) extends for not less than 60 days;

(2) take into account changes in the number of an electric utility's customers and the effects, on a weather-normalized basis, that energy consumption and energy demand have on the amount of revenue recovered through the electric utility's base rates;

(3) be consistent with the manner in which costs for invested capital described by this subsection were allocated to each rate class, as approved by the commission, in an electric utility's most recent base rate statement of intent proceeding with changes to residential and commercial class rates reflected in volumetric charges to the extent that residential and commercial class rates are collected in that manner based on the electric utility's most recent base rate statement of intent proceeding;

(4) not diminish the ability of the commission or a

regulatory authority, on its own motion or on complaint by an affected person as provided by Subchapter D, after reasonable notice and hearing, to change the existing rates of an electric utility for a service after finding that the rates are unreasonable or in violation of law;

(5) be applied by an electric utility on a system-wide basis; and

(6) be supported by the sworn statement of an appropriate employee of the electric utility that affirms that:

(A) the filing is in compliance with the provisions of the tariff or rate schedule; and

(B) the filing is true and correct to the best of the employee's knowledge, information, and belief.

(b) An electric utility in the ERCOT power region, or an unbundled electric utility outside the ERCOT power region in whose service area retail competition is available, that requests a periodic rate adjustment under this section shall:

(1) except as provided by Subsection (f)(3) and to the extent possible, implement simultaneously all nonfuel rates to be adjusted in a 12-month period that are charged by the utility to retail electric providers; and

(2) provide notice to retail electric providers of the approved rates not later than the 45th day before the date the rates take effect.

(c) A periodic rate adjustment approved under this section may not be used to adjust the portion of a nonfuel rate relating to the generation of electricity.

(d) Except as provided by Subsection (d-1), an electric utility may adjust the utility's rates under this section not more than once per year and not more than four times between comprehensive base rate proceedings.

(d-1) For an electric utility subject to Section 36.157, beginning on the effective date of the schedule adopted by the commission under Section 36.157(b), the electric utility may adjust the utility's rates under this section more than four times between base rate proceedings.

(e) A periodic rate adjustment approved under this section

may not include indirect corporate costs or capitalized operations and maintenance expenses.

(f) Nothing in this section is intended to:

(1) conflict with a provision contained in a financing order issued under Subchapter I of this chapter or Subchapter G or J, Chapter 39;

(2) affect the limitation on the commission's jurisdiction under Section 32.002;

(3) include in a periodic rate adjustment authorized by this section costs adjusted under a transmission cost-of-service adjustment approved under Section 35.004(d);

(4) limit the jurisdiction of a municipality over the rates, operations, and services of an electric utility as provided by Section 33.001;

(5) limit the ability of a municipality to obtain a reimbursement under Section 33.023 for the reasonable cost of services of a person engaged in an activity described by that section; or

(6) prevent the commission from:

(A) reviewing the investment costs included in a periodic rate adjustment or in the following comprehensive base rate proceeding to determine whether the costs were prudent, reasonable, and necessary; or

(B) refunding to customers any amount improperly recovered through the periodic rate adjustments, with appropriate carrying costs.

(g) The commission shall adopt rules necessary to implement this section. The rules must provide for:

(1) a procedure by which a tariff or rate schedule is to be reviewed and approved;

(2) filing requirements and discovery consistent with the expedited procedure described by Subsection (a)(1);

(3) an earnings monitoring report that allows the commission or regulatory authority to reasonably determine whether a utility is earning in excess of the utility's allowed return on investment as normalized for weather;

(4) denial of the electric utility's filing if the

electric utility is earning more than the utility's authorized rate of return on investment, on a weather-normalized basis, at the time the periodic rate adjustment request is filed; and

(5) a mechanism by which the commission may refund customers any amounts determined to be improperly recovered through a periodic rate adjustment, including any interest on the amounts.

(h) Repealed by Acts 2017, 85th Leg., R.S., Ch. 200 (S.B. 735), Sec. 5, eff. May 27, 2017.

(h-1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 200 (S.B. 735), Sec. 5, eff. May 27, 2017.

(i) Repealed by Acts 2017, 85th Leg., R.S., Ch. 200 (S.B. 735), Sec. 5, eff. May 27, 2017.

Added by Acts 2011, 82nd Leg., R.S., Ch. 196 (S.B. 1693), Sec. 1, eff. May 28, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 20 (S.B. 774), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 200 (S.B. 735), Sec. 2, eff. May 27, 2017.

Acts 2017, 85th Leg., R.S., Ch. 200 (S.B. 735), Sec. 5, eff. May 27, 2017.

For expiration of this section, see Subsection (f).

Sec. 36.211. RELATION BACK OF RATES FOR CERTAIN NON-ERCOT UTILITIES. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) In a rate proceeding under Subchapter D, or if requested by an electric utility in the utility's statement of intent initiating a rate proceeding under Subchapter C, notwithstanding Section 36.109(a), the final rate set in the proceeding, whether a rate increase or rate decrease, shall be made effective for consumption on and after the 155th day after the date the rate-filing package is filed.

(c) The regulatory authority shall:

(1) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 155th day after the date the rate-filing package is

filed; or

(2) authorize the electric utility to surcharge bills to recover the amount by which the money collected on or after the 155th day after the date the rate-filing package is filed is less than the money that would have been collected under the rate finally ordered.

(d) The regulatory authority may require refunds or surcharges of amounts determined under Subsection (c) over a period not to exceed 18 months, along with appropriate carrying costs. The regulatory authority shall make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding.

(e) A utility may not assess more than one surcharge authorized by Subsection (c)(2) at the same time.

(f) This section expires September 1, 2031.
Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 2, eff. June 17, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1067 (H.B. 1397), Sec. 2, eff. June 14, 2019.

For expiration of this section, see Subsection (g).

Sec. 36.212. RATE CASE REQUIREMENT FOR CERTAIN NON-ERCOT UTILITIES. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) The commission shall require an electric utility to make the filings with regulatory authorities required by Subchapter B, Chapter 33, and to file a rate-filing package under Subchapter D with the commission to initiate a comprehensive base rate proceeding before all of the utility's regulatory authorities:

(1) on or before the fourth anniversary of the date of the final order in the electric utility's most recent comprehensive base rate proceeding; or

(2) if, before the anniversary described by Subdivision (1), the electric utility earns materially more than the utility's authorized rate of return on investment, on a weather-normalized basis, in the utility's two most recent

consecutive commission earnings monitoring reports.

(c) The electric utility must make the filings described by Subsection (b) not later than the 120th day after the date the commission notifies the utility of the requirement described by Subsection (b). The 120-day period may be extended in the manner provided by Section 36.153(b).

(d) The commission may extend the time period described by Subsection (b)(1) and set a new deadline if the commission determines that a comprehensive base rate case would not result in materially different rates. The commission shall give interested parties a reasonable opportunity to present materials and argument before making a determination under this subsection.

(e) The commission shall adopt rules implementing this section, including appropriate notice and scheduling requirements.

(f) This section does not limit the authority of a regulatory authority under Subchapter D.

(g) This section expires September 1, 2031.
Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 3, eff. June 17, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1067 (H.B. 1397), Sec. 3, eff. June 14, 2019.

Text of section as added by Acts 2019, 86th Leg., R.S., Ch. 1067
(H.B. 1397), Sec. 4

For text of section as added by Acts 2019, 86th Leg., R.S., Ch. 610
(S.B. 936), Sec. 1, see other Sec. 36.213.

For expiration of this section, see Subsection (h).

Sec. 36.213. RECOVERY OF GENERATION INVESTMENT BY NON-ERCOT UTILITIES. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility may file, and the commission may approve, an application for a rider to recover the electric utility's investment in a power generation facility.

(c) An application under Subsection (b) may be filed by the electric utility and approved by the commission before the electric utility places the power generation facility in service.

(d) Any rider approved under Subsection (b) shall take effect on the date the power generation facility begins providing service to the electric utility's customers.

(e) Amounts recovered through a rider approved under Subsection (b) are subject to reconciliation in the first comprehensive base rate proceeding for the electric utility that occurs after approval of the rider. During the reconciliation, the commission shall determine if the amounts recovered through the rider are reasonable and necessary.

(f) If a rider approved under Subsection (b) includes incremental recovery for a power generation facility greater than \$200 million on a Texas jurisdictional basis, the electric utility that filed the rider shall initiate a comprehensive base rate proceeding at the commission not later than 18 months after the date the rider takes effect.

(g) The commission shall adopt rules as necessary to implement this section.

(h) This section expires September 1, 2031.
Added by Acts 2019, 86th Leg., R.S., Ch. 1067 (H.B. [1397](#)), Sec. 4, eff. June 14, 2019.

Text of section as added by Acts 2019, 86th Leg., R.S., Ch. 610
(S.B. [936](#)), Sec. 1

For text of section as added by Acts 2019, 86th Leg., R.S., Ch. 1067
(H.B. [1397](#)), Sec. 4, see other Sec. 36.213.

Sec. 36.213. ADJUSTMENT FOR CYBERSECURITY MONITOR COSTS FOR CERTAIN UTILITIES. (a) This section does not apply to an electric utility that operates solely outside of ERCOT and has not elected to participate in the cybersecurity monitor program under Section [39.1516](#).

(b) The commission, on its own motion or on the petition of an electric utility, shall allow the electric utility to recover reasonable and necessary costs incurred in connection with activities under Section [39.1516](#).

Added by Acts 2019, 86th Leg., R.S., Ch. 610 (S.B. [936](#)), Sec. 1, eff. September 1, 2019.

SUBCHAPTER H. RATES FOR GOVERNMENTAL ENTITIES

Sec. 36.351. DISCOUNTED RATES FOR CERTAIN INSTITUTIONS OF HIGHER EDUCATION. (a) Notwithstanding any other provision of this title, each electric utility and municipally owned utility shall discount charges for electric service provided to a facility of a four-year state university, upper-level institution, Texas State Technical College, or college.

(b) The discount is a 20-percent reduction of the utility's base rates that would otherwise be paid under the applicable tariffed rate.

(c) An electric or municipally owned utility is exempt from this section if the 20-percent discount results in a reduction equal to more than one percent of the utility's total annual revenues.

(d) A municipally owned utility is exempt from this section if the municipally owned utility, on September 1, 1995, discounted base commercial rates for electric service provided to all four-year state universities or colleges in its service area by 20 percent or more.

(e) This section does not apply to a rate charged to an institution of higher education by a municipally owned utility that provides a discounted rate to the state for electric services below rates in effect on January 1, 1995, if the discounted rate provides a greater financial discount to the state than is provided to the institution of higher education through the discount provided by this section.

(f) An investor-owned electric utility may not recover from residential customers or any other customer class the assigned and allocated costs of serving a state university or college that receives a discount under this section.

(g) Each electric utility shall file tariffs with the commission reflecting the discount required under this section. The initial tariff filing is not a rate change for purposes of Subchapter C.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.352. SPECIAL RATE CLASS. Notwithstanding any other provision of this title, if the commission, on or before September 1, 1995, approved the establishment of a separate rate class for electric service for a university and grouped public schools in a separate rate class, the commission shall include community colleges in the rate class with public school customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.353. PAYMENT IN LIEU OF TAX. (a) A payment made in lieu of a tax by a municipally owned utility to the municipality by which the utility is owned may not be considered an expense of operation in establishing the utility's rate for providing utility service to a school district or hospital district.

(b) A rate a municipally owned utility receives from a school district or hospital district may not be used to make or to cover the cost of making payments in lieu of taxes to the municipality that owns the utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.354. DISCOUNTED RATES FOR MILITARY BASES. (a) Notwithstanding any other provision of this title, each municipally owned utility, electric cooperative, or electric utility in an area where customer choice is not available or the commission has delayed the implementation of full customer choice in accordance with Section [39.103](#) shall discount charges for electric service provided to a military base.

(b) The discount under Subsection (a) is a 20 percent reduction of the base commercial rate that the municipally owned utility, electric cooperative, or electric utility would otherwise charge the military installation.

(c) An electric utility, municipally owned utility, or electric cooperative may assess a surcharge to all of the utility's retail customers in the state to recover the difference in revenue between the revenues from the discounted rate for military bases provided under Subsection (a) and the base commercial rate. This subsection does not apply to an electric utility, municipally owned utility, or electric cooperative that was providing electric

service to a military base on December 31, 2002, at a rate constituting a discount of 20 percent or more from the utility's base commercial rate that the utility would otherwise charge the military base.

(d) Each electric utility shall file a tariff with the commission reflecting the discount required by Subsection (a) and may file a tariff reflecting the surcharge provided by Subsection (c). Not later than the 30th day after the date the commission receives the electric utility's tariff reflecting the surcharge, the commission shall approve the tariff. A proceeding under this subsection is not a rate change for purposes of Subchapter C.

(e) An electric utility, municipally owned utility, or electric cooperative is exempt from the requirements of Subsection (a) if:

(1) the 20 percent discount would result in a reduction of revenue in an amount that is greater than one percent of the utility's total annual revenues; or

(2) the utility:

(A) was providing electric service to a military base on December 31, 2002, at a rate constituting a discount of 20 percent or more from the utility's base commercial rate that the utility would otherwise charge the military base; and

(B) continues to provide electric service to the military base at a rate constituting a discount of 20 percent or more from the utility's base commercial rate that the utility would otherwise charge the military base.

(f) Each electric utility shall provide the Texas Military Preparedness Commission with the base commercial rate that the utility would otherwise charge the military base and the rate the utility is charging the military base.

(g) For the purposes of this section, the term "military base" does not include a military base:

(1) that has been closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) and its subsequent amendments;

(2) that is administered by an authority established by a municipality under Chapter 379B, Local Government Code;

(3) that is operated by or for the benefit of the Texas National Guard, as defined by Section 437.001, Government Code, unless the base is served by a municipally owned utility owned by a city with a population of 650,000 or more; or

(4) for which a municipally owned utility has acquired the electric distribution system under 10 U.S.C. Section 2688.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 21, eff. May 27, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.23, eff. September 1, 2013.

SUBCHAPTER I. SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS

Sec. 36.401. SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE. (a) The purpose of this subchapter is to enable an electric utility to obtain timely recovery of system restoration costs and to use securitization financing to recover these costs, because that type of debt will lower the carrying costs associated with the recovery of these costs, relative to the costs that would be incurred using conventional financing methods. The proceeds of the transition bonds may be used only for the purposes of reducing the amount of recoverable system restoration costs, as determined by the commission in accordance with this subchapter, including the refinancing or retirement of utility debt or equity.

(b) It is the intent of the legislature that:

(1) securitization of system restoration costs will be accomplished using the same procedures, standards, and protections for securitization authorized under Subchapter G, Chapter 39, as in effect on the effective date of this section, except as provided by this subchapter; and

(2) the commission will ensure that securitization of system restoration costs provides greater tangible and quantifiable benefits to ratepayers than would have been achieved without the issuance of transition bonds.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.402. SYSTEM RESTORATION COSTS; STANDARDS AND DEFINITIONS. (a) In this subchapter, "system restoration costs" means reasonable and necessary costs, including costs expensed, charged to self-insurance reserves, deferred, capitalized, or otherwise financed, that are incurred by an electric utility due to any activity or activities conducted by or on behalf of the electric utility in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of the electric utility as the result of any tropical storm or hurricane, ice or snow storm, flood, or other weather-related event or natural disaster that occurred in calendar year 2008 or thereafter. System restoration costs include mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities. System restoration costs shall include reasonable estimates of the costs of an activity or activities conducted or expected to be conducted by or on behalf of the electric utility in connection with the restoration of service or infrastructure associated with electric power outages, but such estimates shall be subject to true-up and reconciliation after the actual costs are known.

(b) System restoration costs shall include carrying costs at the electric utility's weighted average cost of capital as last approved by the commission in a general rate proceeding from the date on which the system restoration costs were incurred until the date that transition bonds are issued or until system restoration costs are otherwise recovered pursuant to the provisions of this subchapter.

(c) To the extent a utility subject to this subchapter receives insurance proceeds, governmental grants, or any other source of funding that compensate it for system restoration costs, those amounts shall be used to reduce the utility's system restoration costs recoverable from customers. If the timing of a utility's receipt of those amounts prevents their inclusion as a reduction to the system restoration costs that are securitized, or the commission later determines as a result of the true-up and

reconciliation provided for in Subsection (a) that the actual costs incurred are less than estimated costs included in the determination of system restoration costs, the commission shall take those amounts into account in:

(1) the utility's next base rate proceeding; or

(2) any subsequent proceeding, other than a true-up proceeding under Section 39.307, in which the commission considers system restoration costs.

(d) If the commission determines that the insurance proceeds, governmental grants, or other sources of funding that compensate the electric utility for system restoration costs, or the amount resulting from a true-up of estimated system restoration costs are of a magnitude to justify a separate tariff rider, the commission may establish a tariff rider to credit such amounts against charges, other than transition charges or system restoration charges as defined in Section 36.403, being collected from customers.

(e) To the extent that the electric utility receives insurance proceeds, governmental grants, or any other source of funding that is used to reduce system restoration costs, the commission shall impute interest on those amounts at the same cost of capital included in the utility's system restoration costs until the date that those amounts are used to reduce the amount of system restoration costs that are securitized or otherwise reflected in the rates of the utility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.403. STANDARDS AND PROCEDURES GOVERNING SECURITIZATION AND RECOVERY OF SYSTEM RESTORATION COSTS. (a) The procedures and standards of this subchapter and the provisions of Subchapter G, Chapter 39, govern an electric utility's application for, and the commission's issuance of, a financing order to provide for the securitization of system restoration costs, or to otherwise provide for the recovery of system restoration costs.

(b) Subject to the standards, procedures, and tests contained in this subchapter and Subchapter G, Chapter 39, the

commission shall adopt a financing order on the application of the electric utility to recover its system restoration costs. If on its own motion or complaint by an affected person, the commission determines that it is likely that securitization of system restoration costs would meet the tests contained in Section 36.401(b), the commission shall require the utility to file an application for a financing order. On the commission's issuance of a financing order allowing for recovery and securitization of system restoration costs, the provisions of this subchapter and Subchapter G, Chapter 39, continue to govern the financing order and the rights and interests established in the order, and this subchapter and Subchapter G, Chapter 39, continue to govern any transition bonds issued pursuant to the financing order. To the extent any conflict exists between the provisions of this subchapter and Subchapter G, Chapter 39, in cases involving the securitization of system restoration costs, the provisions of this subchapter control.

(c) For purposes of this subchapter, "financing order," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes a financing order authorizing the securitization of system restoration costs.

(d) For purposes of this subchapter, "qualified costs," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes 100 percent of the electric utility's system restoration costs, net of any insurance proceeds, governmental grants, or other source of funding that compensate the utility for system restoration costs, received by the utility at the time it files an application for a financing order. Qualified costs also include the costs of issuing, supporting, and servicing transition bonds and any costs of retiring and refunding existing debt and equity securities of an electric utility subject to this subchapter in connection with the issuance of transition bonds. For purposes of this subchapter, the term qualified costs also includes:

(1) the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under this subchapter; and

(2) costs associated with ancillary agreements such as

any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with the issuance or payment of transition bonds.

(e) For purposes of this subchapter, "transition bonds," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes transition bonds issued in association with the recovery of system restoration costs. Transition bonds issued to securitize system restoration costs may be called "system restoration bonds" or may be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(f) For purposes of this subchapter, "transition charges," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes nonbypassable amounts to be charged for the use of electric services, approved by the commission under a financing order to recover system restoration costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order. Transition charges approved by the commission under a financing order to recover system restoration costs may be called "system restoration charges" or may be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(g) Notwithstanding Section 39.303(c), system restoration costs shall be functionalized and allocated to customers in the same manner as the corresponding facilities and related expenses are functionalized and allocated in the electric utility's current base rates. For an electric utility operating within the Electric Reliability Council of Texas, system restoration costs that are properly includable in the transmission cost of service mechanism adopted under Section 35.004 and associated deferred costs not included under Section 35.004 shall be recovered under the method of pricing provided for in that section and commission rules promulgated under that section; provided, however, that an electric utility operating under a rate freeze or other limitation on its ability to pass through wholesale costs to its customers may defer

such costs and accrue carrying costs at its weighted average cost of capital as last approved by the commission in a general rate proceeding until such time as the freeze or limitation expires.

(h) The amount of any accumulated deferred federal income taxes offset, used to determine the securitization total, may not be considered in future rate proceedings. Any tax obligation of the electric utility arising from its receipt of securitization bond proceeds, or from the collection and remittance of transition charges, shall be recovered by the electric utility through the commission's implementation of this subchapter.

(i) Notwithstanding a rate freeze or limitations on an electric utility's ability to change rates authorized or imposed by any other provision of this title or by a regulatory authority, an electric utility is entitled to recover system restoration costs consistent with the provisions of this subchapter.

(j) If in the course of a proceeding to adopt a financing order the commission determines that the recovery of all or any portion of an electric utility's system restoration costs, using securitization, is not beneficial to ratepayers of the electric utility, under one or more of the tests applied to determine those benefits, the commission shall nonetheless use the proceeding to issue an order permitting the electric utility to recover the remainder of its system restoration costs through an appropriate customer surcharge mechanism, including carrying costs at the electric utility's weighted average cost of capital as last approved by the commission in a general rate proceeding, to the extent that the electric utility has not securitized those costs. A rate proceeding under Subchapter C or D shall not be required to determine and implement this surcharge mechanism. On the final implementation of rates resulting from the filing of a rate proceeding under Subchapter C or D that provides for the recovery of all remaining system restoration costs, a rider or surcharge mechanism adopted under this subsection shall expire. This subsection is limited to instances in which an electric utility has incurred system restoration costs of \$100 million or more in any calendar year after January 1, 2008.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. [769](#)), Sec. 1, eff.

April 16, 2009.

Sec. 36.404. NONBYPASSABLE CHARGES. The commission shall include terms in the financing order to ensure that the imposition and collection of transition charges associated with the recovery of system restoration costs are nonbypassable by imposing restrictions on bypassability of the type provided for in Chapter 39 or by alternative means of ensuring nonbypassability, as the commission considers appropriate, consistent with the purposes of securitization.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.405. DETERMINATION OF SYSTEM RESTORATION COSTS.

(a) An electric utility is entitled to recover system restoration costs consistent with the provisions of this subchapter and is entitled to seek recovery of amounts not recovered under this subchapter, including system restoration costs not yet incurred at the time an application is filed under Subsection (b), in its next base rate proceeding or through any other proceeding authorized by Subchapter C or D.

(b) An electric utility may file an application with the commission seeking a determination of the amount of system restoration costs eligible for recovery and securitization. The commission may by rule prescribe the form of the application and the information reasonably needed to support the application; provided, however, that if such a rule is not in effect, the electric utility shall not be precluded from filing its application and such application cannot be rejected as being incomplete.

(c) The commission shall issue an order determining the amount of system restoration costs eligible for recovery and securitization not later than the 150th day after the date an electric utility files its application. The 150-day period begins on the date the electric utility files the application, even if the filing occurs before the effective date of this section.

(d) An electric utility may file an application for a financing order prior to the expiration of the 150-day period

provided for in Subsection (c). The commission shall issue a financing order not later than 90 days after the utility files its request for a financing order; provided, however, that the commission need not issue the financing order until it has determined the amount of system restoration costs eligible for recovery and securitization.

(e) To the extent the commission has made a determination of the eligible system restoration costs of an electric utility before the effective date of this section, that determination may provide the basis for the utility's application for a financing order pursuant to this subchapter and Subchapter G, Chapter 39. A previous commission determination does not preclude the utility from requesting recovery of additional system restoration costs eligible for recovery under this subchapter, but not previously authorized by the commission.

(f) A rate proceeding under Subchapter C or D shall not be required to determine the amount of recoverable system restoration costs, as provided by this section, or for the issuance of a financing order.

(g) A commission order under this subchapter is not subject to rehearing. A commission order may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the order is signed by the commission. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.406. SEVERABILITY. Effective on the date the first

utility transition bonds associated with system restoration costs are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter, Subchapter G, Chapter 39, as it applies to this subchapter, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of transition bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, and those provisions shall remain in full force and effect.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.